

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

120203

FILE: B-209899**DATE: December 23, 1982****MATTER OF: Joseph Pollak Corporation****DIGEST:**

1. GAO generally will not consider allegation that more restrictive specifications should have been employed, since use of unduly restrictive specifications violates statutes and regulations requiring free and open competition in Federal procurement.
2. Responsibility for tests and procedures to determine product acceptability rests with contracting officials and user activities who are in the best position to determine the Government's minimum needs and methods of meeting them.
3. GAO does not conduct investigations in its bid protest function, and whether agency should investigate equipment delivered under previous contracts to determine whether it was adequately tested or is defective is a matter of contract administration.

Joseph Pollak Corporation protests the opening of bids and any award under solicitation No. DLA700-83-B-0018, issued October 22, 1982, by the Defense Logistics Agency's Defense Construction Supply Center. Pollak submitted a bid in response to the solicitation, but has protested both to our Office and to the agency. We dismiss the protest.

Pollak alleges that the item being procured, 24-volt vehicular light switches meeting Military Specification 11021C, as amended, has caused serious problems in the past, and that approximately 50 percent of the switches delivered to DLA under prior contracts were defective.

Pollak therefore urges us to direct DLA to investigate all switches in its current inventory, to audit testing practices under past contracts, and to determine whether the more stringent first article testing and quality assurance provisions in the protested solicitation will correct the alleged defects. Pollak argues that they will not, and contends that even "tighter" specifications and "more drastic" testing practices are required. If the supplies covered by the protested solicitation are urgently needed, Pollak concludes, they should be procured on a "direct" basis.

We will not consider Pollak's protest. Although our Office reviews allegations that prospective contractors are prevented from competing by unduly restrictive specifications, we do so because the use of such specifications violates the statutes and regulations requiring free and open competition in Federal procurement. Miltope Corporation--Reconsideration, B-188342, June 9, 1977, 77-1 CPD 417, aff'd on reconsideration (second), July 1, 1977, 77-2 CPD 3.

Quite a different situation is presented when, as here, a protester argues that the Government's interest as a user is not adequately protected. Presumably, Pollak would benefit if it were able to convince DLA of its position, because it could then be considered as a "direct," i.e., sole-source, supplier. This apparent interest is not a protectable one under our bid protest function, the purpose of which is to insure that free and open competition is attained. Id. In other words, Pollak's allegations are not a matter of legal concern, because the effect of including other firms in the procurement is consistent with the statutory requirements to broaden competition. Worthington Group, McGraw-Edison Company, B-207348, et al., June 4, 1982, 82-1 CPD 534.

Further, contracting officials and user activities are responsible for insuring that sufficiently rigorous specifications are employed, since they must suffer any difficulties due to inadequate equipment. For these reasons, absent evidence of fraud or wilful misconduct on the part of such officials, we consistently have refused to review allegations that more restrictive specifications should have been used. Constantine N. Polites & Co., B-198089, June 23, 1981, 81-1 CPD 518; Ring Power Corporation, B-201683, March 9, 1981, 81-1 183; Miltope Corporation--Reconsideration, supra.

The same general rule applies to the tests and procedures to determine product acceptability; responsibility rests with contracting officials and user activities. In either case, these individuals are most familiar with the conditions under which the supplies or services being procured will be used, and are therefore in the best position to determine the Government's minimum needs and methods of meeting them. Our Office will not question the technical judgments on which those determinations are based unless they are clearly shown to be unreasonable. See Tyco, B-199632, March 24, 1981, 81-1 CPD 220.

As for Pollak's request for an investigation, we do not conduct investigations in our bid protest function, which is limited to determining the legality of the award or proposed award of specific contracts. Whether DLA should investigate the equipment delivered under previous contracts to determine if it was adequately tested or is defective is a matter of contract administration, which is the responsibility of the procuring activity. MRCA, Inc., B-194275, August 8, 1979, 79-2 CPD 96. We are, however, referring the matter to our Procurement, Logistics, and Readiness Division for such action as deemed appropriate.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel